

House Elections and Ethics
June 23, 2021
Senate Bills 303, 304: Oppose

The ACLU of Michigan is opposed to SB 303 and 304. These bills likely will affect tens of thousands of eligible and registered Michiganders on election day, put them under heightened scrutiny by poll workers, and may discourage many other eligible but unregistered voters from participating due to the costs and administrative burdens of getting a qualifying ID if they do not already have one. Eliminating the long-standing, secure Affidavit Ballot option for in-person ballots also targets Black and low-income Michiganders, who disproportionately lack access to qualifying ID and face severe financial and administrative burdens in acquiring ID. These bills run contrary to the expansive franchise granted by the Michigan and U.S. Constitutions and violate the federal Voting Rights Act as well.

SB 303 and 304 together eliminate the option for Michigan voters to submit an affidavit, signed under penalty of perjury, attesting to their identity and eligibility when attempting to vote without a qualifying photo ID. Instead of the secure affidavit option, voters without qualifying photo ID will sign an application at the polling place that will be matched with their signature in the Qualified Voter File by a poll worker, who may or may not be properly trained in signature matching. Voters without qualifying ID or voters whose signatures are rejected by poll workers will need to submit a provisional ballot that will be rejected unless they produce a qualifying ID and additional documentation within several days of the election. In the 2016 General Election alone, **more than 18,000 voters** relied on the Affidavit Ballot option to cast their ballots. That alone, combined with the lack of any significant evidence of voter fraud related to Affidavit Ballots, provides more than enough reason to reject these bills. But looking behind these overall numbers to who relies upon Affidavit Ballots shows even deeper problems with these bills.

An analysis of Michigan voters relying on the Affidavit Ballot in the November 2016 General Election by Dr. Daniel A. Smith, Professor and Chair of the Department of Political Science at the University of Florida, found that about **half of Affidavit Ballots were cast in precincts with disproportionately Black populations** (from 20.5% to 100% African-American, with an average population that is 44.8% Black). His analysis is attached in full to this testimony. Moreover, the data demonstrates that **voters living in 100% Black precincts were 16 times more likely to cast an Affidavit Ballot than voters living in precincts with no Black residents**. Smith's analysis reveals a similarly stark picture in terms of income, with roughly **half of Affidavit Ballots cast in precincts with a median household income of \$34,680 or less**. Additional quantitative political science work also shows that minority voters in Michigan "are about five times more likely to lack access to ID than white voters."¹ These bills will disenfranchise Black and lower-income voters at staggeringly disproportionate rates.

¹ Marc Meredith, Michael Morse, Phoebe Henninger, *Who Votes Without Identification? Using Individual-Level Administrative Data to Measure the Burden of Strict Voter Identification Laws* (Mar. 4, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3205769.



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Given these statistics, it is no surprise that in 2016 the federal Fifth Circuit Court of Appeals struck down a similar strict voter ID law in Texas under Section 2 of the Voting Rights Act due to its racially disparate impact.² That court found that the Texas law imposed “significant and disparate burdens on the right to vote” and affirmed the district court’s finding that the law had a “stark, racial disparity between those who possess or have access” to a qualifying ID and that the law had “a discriminatory effect on minorities’ voting rights.”³ Similarly, the federal Fourth Circuit Court of Appeals struck down as unconstitutional a strict voter ID law in North Carolina that targeted Black voters, finding that the North Carolina General Assembly used the bill “to entrench itself” and “did so by targeting voters who, based on race, were unlikely to vote for the majority party.”⁴ Just last year, the Missouri Supreme Court also struck down a law that tightened voter ID requirements as violating the Missouri Constitution.⁵

We appreciate the effort made to try to maintain accessibility by allowing a voters’ signature to be matched across their signature in the Qualified Voter File by a poll worker if they lack identification. However, despite the good intentions, we are concerned this will lead to a compounding of racial disparities because Black and lower-income voters will fall into this new scenario at disproportionate numbers. Signature match—especially without explicit standards, training, and decisions not just made by one individual—tend to result in the ballots of members of racial and ethnic minorities and younger voters to be rejected at higher rates.⁶ A recent study in Florida last year found that among early mail-in ballots in Florida, “ballots cast by Hispanic voters face a rejection risk 2.6 times that of white voters.”⁷ Another recent study showed that “Black, Hispanic, and other racial and ethnic minorities,” as well as “by overseas and uniformed personnel under UOCAVA” have their signatures rejected at much higher rates in Florida.⁸ Additionally, because the voter will be right in front of the poll worker, as opposed to signature matching done on absentee ballots, there will be an increased risk of at least implicit bias when the worker is doing the “matching.”

Without uniform training and standards, rejection rates can vary greatly by jurisdiction, raising due process and equal protection issues. Such a signature match process can result in high error rates for rejection. According to an expert report in litigation filed by the ACLU of Ohio last year, in Ohio, “there is a 97% probability that a ballot that has been rejected because of a purported signature mismatch has been wrongly rejected.”⁹ Federal Courts have also weighed in. In 2018 the 11th Circuit

² *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

³ *Id.* at 256, 264–65.

⁴ *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016).

⁵ *Priorities USA v. State*, 591 S.W.3d 448, 451 (Mo. 2020), *reh’g denied* (Jan. 30, 2020).

⁶ <https://www.aclufl.org/en/publications/vote-mail-ballots-cast-florida>

⁷ <https://www.gainesville.com/story/opinion/2020/10/24/michael-herron-and-daniel-a-smith-thousands-mail-ballots-verge-being-rejected/3742675001/>

⁸ See Anna Baringer, Michael C. Herron, Daniel A. Smith, *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus* at 19-20, Univ. of Fla., Apr. 25, 2020, https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf

⁹ Report of Dr. Alexander Street, *League of Women Voters of Ohio et al. v. LaRose*, ECF No. 24-8 at 7 (S.D. Ohio Aug. 24, 2020) linked here at pp. 323-48: <https://lawyerscommittee.org/wp-content/uploads/2020/08/Ohio.pdf>



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found a constitutional violation where there is a “standardless determination made by laypeople that the signature on a voters’ vote-by-mail or provisional ballot does not match the signature on file with the supervisor of elections” when done “without procedural safeguards.”

As you are well aware, Michigan voters recently supported in overwhelming numbers an amendment to the Michigan Constitution that provided greater protections to the right to vote both in-person and by absentee that “shall be liberally construed in favor of voters’ rights in order to effectuate its purpose.”¹⁰ These bills run contrary to the text and spirit of the Michigan and federal constitutions as well as the federal Voting Rights Act. Michigan voters deserve better. If their legislators choose racist voter suppression techniques rather than full enfranchisement, we will vindicate voters’ rights in court. The Legislature should preserve taxpayer resources and protect the right to vote by rejecting these unnecessary and mean-spirited bills.

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¹⁰ MI CONST Art. 2, § 4.